

104TH CONGRESS  
1ST SESSION

# H. R. 229

To impose certain requirements on medical malpractice liability claims.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1995

Mr. DORNAN introduced the following bill; which was referred to the Committee on the Judiciary and, in addition, to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To impose certain requirements on medical malpractice liability claims.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Medical Injury Com-  
5       pensation Reform Act of 1995”.

6       **SEC. 2. GENERAL PROVISIONS.**

7       (a) CONGRESSIONAL FINDINGS.—

8               (1) EFFECT ON INTERSTATE COMMERCE.—The  
9       Congress finds that the health care and insurance

1 industries are industries affecting interstate com-  
2 merce and the medical malpractice litigation systems  
3 existing throughout the United States affect inter-  
4 state commerce by contributing to the high cost of  
5 health care and premiums for malpractice insurance  
6 purchased by health care providers.

7 (2) EFFECT ON FEDERAL SPENDING.—The  
8 Congress finds that the medical malpractice litiga-  
9 tion systems existing throughout the United States  
10 have a significant effect on the amount, distribution,  
11 and use of Federal funds because of—

12 (A) the large number of individuals who  
13 receive health care benefits under programs op-  
14 erated or financed by the Federal Government;

15 (B) the large number of individuals who  
16 benefit because of the exclusion from Federal  
17 taxes of the amounts spent by their employers  
18 to provide them with health insurance benefits;

19 (C) the large number of health care provid-  
20 ers and health care professionals who provide  
21 items or services for which the Federal Govern-  
22 ment makes payments; and

23 (D) the large number of such providers  
24 and professionals who have received direct or  
25 indirect financial assistance from the Federal

1 Government because of their status as such  
2 professionals or providers.

3 (b) APPLICABILITY.—This Act shall apply with re-  
4 spect to any medical malpractice liability claim and to any  
5 medical malpractice liability action brought in any State  
6 or Federal court, except that this Act shall not apply to—

7 (1) a claim or action for damages arising from  
8 a vaccine-related injury or death to the extent that  
9 title XXI of the Public Health Service Act applies to  
10 the claim or action; or

11 (2) a claim or action in which the claimant's  
12 sole allegation is an allegation of an injury arising  
13 from the use of a medical product.

14 (c) PREEMPTION OF STATE LAW.—Subject to section  
15 10, this Act supersedes State law only to the extent that  
16 State law differs from any provision of law established by  
17 or under this Act. Any issue that is not governed by any  
18 provision of law established by or under this Act shall be  
19 governed by otherwise applicable State or Federal law.

20 (d) FEDERAL COURT JURISDICTION NOT ESTAB-  
21 LISHED ON FEDERAL QUESTION GROUNDS.—Nothing in  
22 this Act shall be construed to establish any jurisdiction  
23 in the district courts of the United States over medical  
24 malpractice liability actions on the basis of section 1331  
25 or 1337 of title 28, United States Code.

1 **SEC. 3. DEFINITIONS.**

2 As used in this Act:

3 (1) CLAIMANT.—The term “claimant” means  
4 any person who alleges a medical malpractice liability  
5 claim or, in the case of an individual who is deceased,  
6 incompetent, or a minor, the person on  
7 whose behalf such a claim is alleged.

8 (2) ECONOMIC DAMAGES.—The term “economic  
9 damages” means damages paid to compensate an individual  
10 for losses for hospital and other medical expenses,  
11 lost wages, lost employment, and other pecuniary  
12 losses.

13 (3) HEALTH CARE PROFESSIONAL.—The term  
14 “health care professional” means any individual who  
15 provides health care services in a State and who is  
16 required by State law or regulation to be licensed or  
17 certified by the State to provide such services in the  
18 State.

19 (4) HEALTH CARE PROVIDER.—The term  
20 “health care provider” means any organization or  
21 institution that is engaged in the delivery of health  
22 care services in a State and that is required by State  
23 law or regulation to be licensed or certified by the  
24 State to engage in the delivery of such services in  
25 the State.

1           (5) INJURY.—The term “injury” means any ill-  
2           ness, disease, or other harm that is the subject of  
3           a medical malpractice liability action or claim.

4           (6) MEDICAL MALPRACTICE LIABILITY AC-  
5           TION.—The term “medical malpractice liability ac-  
6           tion” means a civil action (other than an action in  
7           which the claimant’s sole allegation is an allegation  
8           of an intentional tort) brought in a State or Federal  
9           court against a health care provider or health care  
10          professional (regardless of the theory of liability on  
11          which the action is based) in which the claimant al-  
12          leges a medical malpractice liability claim.

13          (7) MEDICAL MALPRACTICE LIABILITY  
14          CLAIM.—The term “medical malpractice liability  
15          claim” means a claim in which the claimant alleges  
16          that injury was caused by the provision of (or the  
17          failure to provide) health care services.

18          (8) MEDICAL PRODUCT.—The term “medical  
19          product” means a device (as defined in section  
20          201(h) of the Federal Food, Drug, and Cosmetic  
21          Act) or a drug (as defined in section 201(g)(1) of  
22          the Federal Food, Drug, and Cosmetic Act).

23          (9) NONECONOMIC DAMAGES.—The term “non-  
24          economic damages” means damages paid to com-  
25          pensate an individual for losses for physical and

1 emotional pain, suffering, inconvenience, physical  
2 impairment, mental anguish, disfigurement, loss of  
3 enjoyment of life, loss of consortium, and other  
4 nonpecuniary losses, but does not include punitive  
5 damages.

6 (10) SECRETARY.—The term “Secretary”  
7 means the Secretary of Health and Human Services.

8 (11) STATE.—The term “State” means each of  
9 the several States, the District of Columbia, the  
10 Commonwealth of Puerto Rico, and any other terri-  
11 tory or possession of the United States.

12 **SEC. 4. EFFECTIVE DATE.**

13 (a) IN GENERAL.—Except as provided in subsection  
14 (b) and section 11, this Act shall apply with respect to  
15 claims accruing or actions brought on or after the expira-  
16 tion of the 3-year period that begins on the date of the  
17 enactment of this Act.

18 (b) EXCEPTION FOR STATES REQUESTING EARLIER  
19 IMPLEMENTATION OF REFORMS.—

20 (1) APPLICATION.—A State may submit an ap-  
21 plication to the Secretary requesting the early imple-  
22 mentation of this Act with respect to claims or ac-  
23 tions brought in the State.

24 (2) DECISION BY SECRETARY.—The Secretary  
25 shall issue a response to a State’s application under

1 paragraph (1) not later than 90 days after receiving  
2 the application. If the Secretary determines that the  
3 State meets the requirements of this Act at the time  
4 of submitting its application, the Secretary shall ap-  
5 prove the State's application, and this Act shall  
6 apply with respect to actions brought in the State on  
7 or after the expiration of the 90-day period that be-  
8 gins on the date the Secretary issues the response.  
9 If the Secretary denies the State's application, the  
10 Secretary shall provide the State with a written ex-  
11 planation of the grounds for the decision.

12 **SEC. 5. STATUTE OF LIMITATIONS.**

13 (a) IN GENERAL.—No medical malpractice liability  
14 claim may be brought after the expiration of the 2-year  
15 period that begins on the date the alleged injury that is  
16 the subject of the action should reasonably have been dis-  
17 covered, but in no event after the expiration of the 4-year  
18 period that begins on the date the alleged injury occurred.

19 (b) EXCEPTION FOR MINORS.—In the case of an al-  
20 leged injury suffered by a minor who has not attained 6  
21 years of age, no medical malpractice liability claim may  
22 be brought after the expiration of the 2-year period that  
23 begins on the date the alleged injury that is the subject  
24 of the action should reasonably have been discovered, but

1 in no event after the date on which the minor attains 10  
2 years of age.

3 **SEC. 6. ATTORNEYS' FEES.**

4 (a) LIMITATION ON CONTINGENCY FEES.—An attor-  
5 ney shall not contract for or collect a contingency fee for  
6 representing a claimant in a medical malpractice liability  
7 action in excess of the following:

8 (1) 40 percent of the first \$50,000 (or portion  
9 thereof) of the amount recovered by the claimant.

10 (2) 33 $\frac{1}{3}$  percent of the next \$50,000 (or por-  
11 tion thereof) of the amount recovered by the claim-  
12 ant.

13 (3) 25 percent of the next \$500,000 (or portion  
14 thereof) of the amount recovered by the claimant.

15 (4) 15 percent of any amounts recovered by the  
16 claimant in excess of \$600,000.

17 This subsection applies whether the recovery is by settle-  
18 ment, arbitration, or judgment.

19 (b) CALCULATION OF PERIODIC PAYMENTS.—If peri-  
20 odic payments are awarded to the claimant pursuant to  
21 section 7(b), the court shall place a total value on these  
22 payments based upon the projected life expectancy of the  
23 claimant and include this amount in computing the total  
24 award from which attorneys' fees are calculated under  
25 subsection (a).



1 (c) EFFECT OF FAILURE TO COMPLY.—Failure to  
2 comply with this section by an attorney at law shall be  
3 grounds for professional discipline by the appropriate  
4 State agency responsible for the conduct of disciplinary  
5 actions against attorneys-at-law.

6 (d) DEFINITIONS.—For purposes of this section—

7 (1) the term “contingency fee” means any fee  
8 for professional legal services which is in whole or in  
9 part contingent upon the recovery of any amount of  
10 damages, whether through judgment or settlement;  
11 and

12 (2) the term “recovered” means the net sum re-  
13 covered after deducting any disbursements or costs  
14 incurred in connection with prosecution or settle-  
15 ment of the claim, except that costs of medical care  
16 incurred by the claimant and the attorney’s office  
17 overhead costs or charges shall not be deductible dis-  
18 bursements under this paragraph.

19 **SEC. 7. CALCULATION AND PAYMENT OF DAMAGES.**

20 (a) LIMITATION ON NONECONOMIC DAMAGES.—The  
21 total amount of noneconomic damages that may be award-  
22 ed to a claimant for losses resulting from the injury which  
23 is the subject of a medical malpractice liability action may  
24 not exceed \$250,000, regardless of the number of parties

1 against whom the action is brought or the number of ac-  
2 tions brought with respect to the injury.

3 (b) PERIODIC PAYMENTS FOR FUTURE LOSSES.—If  
4 more than \$50,000 in damages for expenses to be incurred  
5 in the future is awarded to the claimant in a medical mal-  
6 practice liability action, the court shall, at the request of  
7 either party, enter a judgment ordering such damages to  
8 be paid on a periodic basis determined appropriate by the  
9 court (based upon projections of when such expenses are  
10 likely to be incurred).

11 (c) MANDATORY OFFSETS FOR DAMAGES PAID BY A  
12 COLLATERAL SOURCE.—The total amount of damages re-  
13 ceived by a claimant in a medical malpractice liability ac-  
14 tion shall be reduced by any other payment that has been  
15 or will be made to the individual to compensate the claim-  
16 ant for the injury that was the subject of the action, in-  
17 cluding payment under—

18 (1) Federal or State disability or sickness pro-  
19 grams;

20 (2) Federal, State, or private health insurance  
21 programs;

22 (3) private disability insurance programs;

23 (4) employer wage continuation programs; and

24 (5) any other source of payment intended to  
25 compensate the claimant for such injury.

1 **SEC. 8. NOTICE OF ACTION.**

2 (a) NOTICE REQUIREMENT.—

3 (1) IN GENERAL.—No medical malpractice li-  
4 ability action may be commenced unless the defend-  
5 ant has been given at least 90 days notice of the in-  
6 tention to commence the action.

7 (2) CONTENTS OF NOTICE.—The notice under  
8 paragraph (1) shall include the legal basis of the  
9 medical malpractice liability claim on which the ac-  
10 tion is based and the type of loss sustained, includ-  
11 ing the specific nature of the injuries suffered.

12 (b) EFFECT ON STATUTE OF LIMITATIONS.—If the  
13 notice under paragraph (1) is served within 90 days before  
14 the expiration of the statute of limitations for filing the  
15 medical malpractice liability action, the time for commenc-  
16 ing the action shall extend for 90 days after the notice  
17 under paragraph (1) is served.

18 (c) EFFECT OF FAILURE TO COMPLY.—Failure to  
19 comply with this section shall not invalidate any court pro-  
20 ceedings in the medical malpractice liability action in-  
21 volved, and shall not affect the jurisdiction of the court  
22 to render a judgment in the action, but a failure to comply  
23 with this section by an attorney at law shall be grounds  
24 for professional discipline by the appropriate State agency  
25 responsible for the conduct of disciplinary actions against  
26 attorneys-at-law.

1 **SEC. 9. INJUNCTIVE RELIEF.**

2 Whenever any person has engaged or is about to en-  
3 gage in any conduct in violation of this Act, the appro-  
4 priate court may, upon application of an interested party,  
5 issue an injunction or other appropriate order restraining  
6 such conduct.

7 **SEC. 10. PREEMPTION.**

8 (a) IN GENERAL.—The preceding provisions of this  
9 Act supersede any State law only to the extent that State  
10 law—

11 (1) permits the recovery of a greater amount of  
12 damages by claimant;

13 (2) permits the collection of a greater amount  
14 of attorneys' fees by a claimant's attorney; or

15 (3) establishes a longer period during which a  
16 medical malpractice liability claim may be initiated.

17 (b) EFFECT ON SOVEREIGN IMMUNITY AND CHOICE  
18 OF LAW OR VENUE.—Nothing in subsection (a) shall be  
19 construed to—

20 (1) waive or affect any defense of sovereign im-  
21 munity asserted by any State under any provision of  
22 law;

23 (2) waive or affect any defense of sovereign im-  
24 munity asserted by the United States;

25 (3) affect the applicability of any provision of  
26 the Foreign Sovereign Immunities Act of 1976;

1           (4) preempt State choice-of-law rules with re-  
2       spect to claims brought by a foreign country or a  
3       citizen of a foreign country; or

4           (5) affect the right of any court to transfer  
5       venue or to apply the law of a foreign country or to  
6       dismiss a claim of a foreign country or of a citizen  
7       of a foreign nation on the ground of inconvenient  
8       forum.

9   **SEC. 11. PERMITTING STATE PROFESSIONAL SOCIETIES TO**  
10                   **PARTICIPATE IN DISCIPLINARY ACTIVITIES.**

11       (a) **ROLE OF PROFESSIONAL SOCIETIES.**—Notwith-  
12       standing any other provision of State or Federal law, a  
13       State agency responsible for the conduct of disciplinary  
14       actions for a type of health care practitioner may enter  
15       into agreements with State or county professional societies  
16       of such type of health care practitioner to permit such so-  
17       cieties to participate in the licensing of such health care  
18       practitioner, and to review any health care malpractice ac-  
19       tion, health care malpractice claim or allegation, or other  
20       information concerning the practice patterns of any such  
21       health care practitioner. Any such agreement shall comply  
22       with subsection (b).

23       (b) **REQUIREMENTS OF AGREEMENTS.**—Any agree-  
24       ment entered into under subsection (a) for licensing activi-  
25       ties or the review of any health care malpractice action,

1 health care malpractice claim or allegation, or other infor-  
2 mation concerning the practice patterns of a health care  
3 practitioner shall provide that—

4 (1) the health care professional society conducts  
5 such activities or review as expeditiously as possible;

6 (2) after the completion of such review, such so-  
7 ciety shall report its findings to the State agency  
8 with which it entered into such agreement;

9 (3) the conduct of such activities or review and  
10 the reporting of such findings be conducted in a  
11 manner which assures the preservation of confiden-  
12 tiality of health care information and of the review  
13 process; and

14 (4) no individual affiliated with such society is  
15 liable for any damages or injury directly caused by  
16 the individual's actions in conducting such activities  
17 or review.

18 (c) AGREEMENTS NOT MANDATORY.—Nothing in  
19 this section may be construed to require a State to enter  
20 into agreements with societies described in subsection (a)  
21 to conduct the activities described in such subsection.

22 (d) EFFECTIVE DATE.—This section shall take effect  
23 2 years after the date of the enactment of this Act.

○